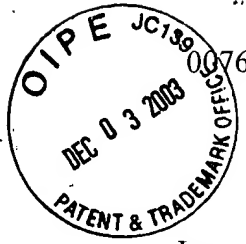


DAC \$ #6
Box 507



00766.000046

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
	:	Examiner: N/Y/A
HIROMASA MIYAJI ET AL.)	
	:	Group Art Unit: N/Y/A
Application No.: 09/763,793)	
	:	
Filed: February 27, 2001)	
	:	
For: NOVEL POLYPEPTIDE)	December 2, 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. § 1.137(a)

Sir:

Applicants hereby petition the Commissioner under 37 C.F.R. § 1.137(b) to restore to pending status the above-identified application, which has become unavoidably abandoned for failure to timely file a proper reply to an earlier Office Action (unmarked paper dated April 3, 2001).

12/04/2003 MBLANCO 00000011 09763793

02 000000

444 AA 00

Adjustment date: 03/05/2004 SNAJARRO
12/04/2003 MBLANCO 00000011 09763793
01 FC:1452 -110.00 OP

RECEIVED

DEC 05 2003

OFFICE OF PETITIONS

SHOWING UNDER 37 C.F.R. §1.137(a)(3)

As explained below, the entire delay in filing the required reply from the date for the reply until the filing of this grantable petition was unavoidable.

This application was filed in the U.S. Patent and Trademark Office on February 27, 2001. The application papers included: inventor information sheet, specification (including 19 pages of sequence listing and 9 drawing sheets), oath, submission of Assignment for recordal, preliminary amendment and Forms PCT/RO/101, IB/304, ISA/220, ISA/210, IB/308, IPEA/416, IPEA/409 (Japanese original and English translation), IB/338, IB/306, and International Publication WO 00/12550.

The transmittal letter to United States Designated/Elected office (DO/EO/US) plainly stated "SEND ALL CORRESPONDENCE TO:

Lawrence S. Perry
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, NY 10112
Tel: (212) 218-2100
Fax: (212) 218-2200"

The undersigned filed, on May 9, 2001, an Information Disclosure Statement with ten (10) references, on June 5, 2001 a Submission of Formal Drawings with nine (9) sheets, on November 30, 2001, a Request for Issuance of Official Filing Receipt and on April 8, 2002, a second Information Disclosure Statement with ten (1) references.

On April 11, 2002, the undersigned received a Notice of Cancellation of Assigned Serial Number stating some papers were assigned 09/786,162 and some papers 09/763,793, and that 09/786,162 was cancelled.

The recorded assignment was returned June 6, 2002.

The undersigned filed on October 25, 2002 a Second Request for Issuance of Official Filing Receipt.

On January 24, 2003, a check of the PAIR system gave the response "Sorry, the entered Application Number '09/763,793' is invalid." Accordingly, on February 4, 2003, the undersigned filed a Status Inquiry.

No other papers were received from, or filed in, the Patent and Trademark Office.

Various telephone calls were made to the Patent Office inquiry as to the status of the application but none was ever returned; finally the undersigned called the PCT Help Desk on November 12, 2003. The Help Desk representative looked up all files concerning the various PCT and US serial numbers Applicants had available. The Help Desk confirmed there is no file associated with 09/786,162. The Help Desk also reported a Notice of Incomplete Application Form PTO-909 was mailed April 3, 2001, no response was made and this case was subsequently abandoned.

This Office communication (Notice of Incomplete Application) was not received by the undersigned or his law firm; the undersigned has made a search of the file jacket and all offices for the same. That search, as well as search of the docket records for this application indicates the Office communication was not received.

Enclosed at Tab A is a copy of the Docket Record for the above-identified application where the nonreceived Office communication would have been entered had it been received and docketed. The Docket Record also shows all replies docketed (here, none) to date for this application and provides documentary proof of nonreceipt of the Office Action. MPEP §711.03(c)II.

On November 12, immediately upon learning from the Help Desk this application was abandoned, the undersigned commenced obtaining a copy of the official filewrapper to obtain the April 3, 2001 Notice. That filewrapper was received on November 24 and preparation of this Petition commenced forthwith.

Wherefore, the undersigned hereby certifies that the entire delay in filing the required reply from the due date of the reply until the filing of this grantable Petition was unavoidable. (In that regard, the undersigned notes that the Notice of Incomplete Application bore the correct address but indicated the undersigned only, not his law firm. Accordingly, enclosed at Tab B is a Change of Correspondence Address request, to ensure that future Patent Office communications reach the undersigned.)

Nonetheless, solely in order to expedite resolution of the status herein, should the Commissioner not deem for any reason the entire delay unavoidable, the Commissioner is hereby authorized to treat this Petition under Rule 137(b) as pertaining to an unintentionally abandoned application.^{1/}

In accordance with 37 C.F.R. §1.137(a)(2), enclosed is a check in the amount of \$110.00 for payment of the fee required under 37 C.F.R. § 1.17(i) in connection with this Petition. Please charge any additional fees due in connection with this Petition or if necessary, any Petition under 37 C.F.R. §1.137(b), or credit any overpayment, to Deposit Account No. 06-1205.

^{1/}

For completeness, the undersigned states as well that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable Petition pursuant to 37 C.F.R. §1.137(b) was unintentional.

RESPONSE TO OFFICE ACTION

In accordance with 37 C.F.R. § 1.137(a)(1), attached hereto at Tab C is a Submission of Computer Readable Form.

RELIEF REQUESTED

In view of the foregoing, the Commissioner is respectfully requested to return the above-identified application to pending status.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,


Attorney for Applicants
Lawrence S. Perry
Registration No. 31,865

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

NY_MAIN 392586v1

Date: 12/01/03	Master List	Page: 1
Time: 14:26:40	By Case Number	

Case Number	Client	Atty	Assignee	Disclosure Status
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766.46	NIPGI	LSP	KYOWA HAKKO KOGYO CO., LTD.	Filed
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Title: NOVEL POLYPEPTIDE

Product:	Client Reference: K46-128903	
Origin: JAPAN	Priority Applic. #: 241248/98	File Date: 08/27/98

Ctry	Sub Case No.	Type Case	Status	Appln No/ Filing Date	Patent No./ Issue Date	Agent/ Agent Ref.	Tax Schedule/ Paid Thru
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USA	ORD	PENDING		09/763793 02/27/01			NL
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Remarks: NTL PHS PCT/JP99/04602 OF 082699; #766.46A-INCOMPL##; FAX 8/16-REF; FX 112603 - PREPARE & SUBMIT PETITION;

	Action Due	Due Date	Response Sent	Date Sent	Method Sent	Receipt Recvd Date
#1	STATUS CK+24	08/27/04				
#3	OFR STAT +30	12/27/03				
01	CONV/DATE	02/27/01	APPLN SENT	02/27/01	CEM PR PS	yes 02/27/01
02	REVISED SPEC	01/09/01				
03			PRLM/AMEND	02/27/01	CEM PR PS	yes 02/27/01
04			SEQNC LIST	02/27/01	CEM PR PS	yes 02/27/01
05			INFO/DISCL	05/09/01	ACS/DCO	yes 05/10/01
06			FRML DWGS	06/05/01	ACS/DCO	yes 06/06/01
07			RQ FI RCPT	11/30/01	ACS/DCO	yes 12/03/01
08			INFO/DISCL	04/08/02	ACS/DCO	yes 04/09/02
09	COMM: USAN	04/04/02				
10	RCRD ASSIGN	06/06/02				
11			RQ FI RCPT	10/25/02	ACS/DCO	yes 10/28/02
12			STAT INQRY	02/04/03	ACS/DCO	yes 02/05/03

Inventor(s)

 MIYAJI, H
 MIMURA, H
 HARUOKA, M
 NAKAGAWA, S
